



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177904

31077
June 15, 1973

Digital Computer Controls,
Incorporated
12 Industrial Road
Fairfield, New Jersey 07006

Attention: Mr. Phillip I. Raffield
Vice President-Marketing

Gentlemen:

We refer to your letter of May 9, 1973, requesting us to reconsider our decision, B-177904, May 4, 1973, wherein we declined to rule upon the merits of your protest.

As we stated the facts in that decision:

Department of Commerce solicitation No. 2-35377 was issued April 20, 1972, with a closing date as amended of June 2, 1972. Daconics was one of four firms (of the eight that responded) considered to be in the competitive range. None of these firms proposed the use of your D-116 computers in its initial proposal. Daconics initially proposed only the use of Data General Corporation's NOVA computers in the system it intended to furnish. Negotiations were conducted with each of four firms, and they were subsequently requested to submit their best and final offers by August 30, 1972.

In submitting their best and final offers, both Daconics and F & M Systems (one of the other four firms included in the negotiations) submitted alternate proposals utilizing your D-116 computer. Daconics' offer for its proposal utilizing the Data General NOVA computers was \$1,719,770. Its offer under the alternate proposal utilizing your D-116 computers was \$1,626,768. On November 22, 1972, Daconics' proposal based upon the use of Data General's NOVA computers was accepted and award was made.

[Request for Reconsideration of Decision by
Protest]

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We declined to rule on the merits of your protest because, insofar as it related to the award of the prime contract to Daconics, it was untimely since it was not filed in our Office within 5 days of notification of the adverse agency action 4 CFR 20.2(a). Further, insofar as the protest related to the award of a subcontract by Daconics, the bid protest procedures of our Office do not provide for the adjudication of protests by firms against subcontract awards made by prime contractors not acting as purchasing agents of the Government. 50 Comp. Gen. 803, 806 (1972).

In your letter of May 9, 1973, you explain the nature of your protest by stating that:

Digital Computer Controls, Inc. is not protesting the award to Daconics as such, but rather the mandate by Department of Commerce that a higher priced alternate, utilizing competitive and totally equivalent computers, was selected for the reason given that the documents supplied by DCC were marked "Preliminary" and thereby became categorized as "Promises" under CG Decision B-174597.

You state that we should determine "whether the application of CG Decision B-174597 is appropriate in this instance." Essentially, you contend that your firm did furnish adequate documentation to meet the requirements of the solicitation and therefore the proposal offering your equipment should have been selected for the award.

By letter dated December 28, 1972, you initially protested to the Department of Commerce against the award of a contract which included the use of Data General's NOVA 1200 series computers. The Department of Commerce responded by letter dated January 11, 1973, and informed you that all the offers utilizing your D-116 computers were considered to be nonresponsive since the documentation provided for the D-116 computers included information marked "Preliminary." The agency concluded that this "preliminary" information was merely a blanket promise to furnish a conforming system, citing B-174597, April 21, 1972.

By letter dated January 25, 1973, and received by our Office on January 30, 1973, you filed your protest with us, clearly more than 5 days after you received notice of the adverse agency action.

Our Interim Bid Protest Procedures and Standards, 4 CFR 20.2(a), provide in part:

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* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days or notification of adverse agency action will be considered provided the initial protest to the agency was made timely. The term "filed" as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be and protestors are, therefore, cautioned that protests should be transmitted or delivered in that manner which will assure earliest receipt.

Since your protest was not received by this Office within 5 days of the adverse agency action, it was determined to be untimely.

Since your protest before this Office was not timely filed, we cannot consider it on its merits. Your question, whether or not our decision, B-174597, supra, applies in the instant case may not be considered.

Accordingly, our prior decision, B-177904, May 4, 1973, declining to rule on the merits of your protest, is affirmed.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States